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FILED

MAR 11 2013

Board of Vocational Nursing
and Psychiatric Technicians

9 **BEFORE THE**
10 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. VN-2010-5051

13 **DEBORAH ANN FLEISCHBEIN**
14 **991 Turney Drive**
Bullhead City, AZ 86442

A C C U S A T I O N

15 **Vocational Nurse License No. VN 173469**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in
21 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric
22 Technicians, Department of Consumer Affairs.

23 2. On or about August 16, 1995, the Board of Vocational Nursing and Psychiatric
24 Technicians issued Vocational Nurse License Number VN 173469 to Deborah Ann Fleischbein
25 (Respondent). The Vocational Nurse License expired on December 31, 2012, and has not been
26 renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

8. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct,

1 notwithstanding that evidence of that misconduct may be recorded in a record
2 pertaining to an arrest.

3 This section shall not be construed to apply to any drug diversion program
4 operated by any agency established under Division 2 (commencing with Section 500)
5 of this code, or any initiative act referred to in that division.

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13 9. Section 493 of the Code states:

14 Notwithstanding any other provision of law, in a proceeding conducted by a
15 board within the department pursuant to law to deny an application for a license or to
16 suspend or revoke a license or otherwise take disciplinary action against a person who
17 holds a license, upon the ground that the applicant or the licensee has been convicted
18 of a crime substantially related to the qualifications, functions, and duties of the
19 licensee in question, the record of conviction of the crime shall be conclusive
20 evidence of the fact that the conviction occurred, but only of that fact, and the board
21 may inquire into the circumstances surrounding the commission of the crime in order
22 to fix the degree of discipline or to determine if the conviction is substantially related
23 to the qualifications, functions, and duties of the licensee in question.

24 As used in this section, "license" includes "certificate," "permit," "authority,"
25 and "registration."

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10. Section 2878 of the Code states:

1 The Board may suspend or revoke a license issued under this chapter [the
2 Vocational Nursing Practice Act [(Bus. & Prof. Code, § 2840, et seq.)] for any of the
3 following:

4 (a) Unprofessional conduct, which includes, but is not limited to, the
5 following:

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7 (f) Conviction of a crime substantially related to the qualifications, functions,
8 and duties of a licensed vocational nurse, in which event the record of the conviction
9 shall be conclusive evidence of the conviction.

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22 11. Section 2878.5 of the Code states:

23 In addition to other acts constituting unprofessional conduct within the meaning
24 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for
25 a person licensed under this chapter to do any of the following:

26 (a) Obtain or possess in violation of law, or prescribe, or except as directed by
27 a licensed physician and surgeon, dentist or podiatrist administer to himself or herself
28 or furnish or administer to another, any controlled substance as defined in Division 10
29 of the Health and Safety Code, or any dangerous drug as defined in Section 4022.

30 (b) Use any controlled substance as defined in Division 10 of the Health and
31 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic

1 beverages, to an extent or in a manner dangerous or injurious to himself or herself,
2 any other person, or the public, or to the extent that the use impairs his or her ability
to conduct with safety to the public the practice authorized by his or her license.

3 (c) Be convicted of a criminal offense involving possession of any narcotic or
4 dangerous drug, or the prescription, consumption, or self-administration of any of the
5 substances described in subdivisions (a) and (b) of this section, in which event the
6 record of the conviction is conclusive evidence thereof.

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8 12. Section 2878.6 of the Code states:

9 A plea or verdict of guilty or a conviction following a plea of nolo contendere
10 made to a charge substantially related to the qualifications, functions and duties of a
11 licensed vocational nurse is deemed to be a conviction within the meaning of this
12 article. The board may order the license suspended or revoked, or may decline to
13 issue a license, when the time for appeal has elapsed, or the judgment of conviction
has been affirmed on appeal or when an order granting probation is made suspending
the imposition of sentence, irrespective of a subsequent order under the provisions of
Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty
and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing
the accusation, information or indictment.

14 REGULATORY PROVISIONS

15 13. California Code of Regulations, title 16, section 2518.6, provides, in pertinent part,
16 that a licensed vocational nurse shall adhere to standards of the profession, and shall incorporate
17 ethical and behavioral standards of professional practice by abstaining from chemical/substance
18 abuse. A violation of this section constitutes unprofessional conduct for purposes of initiating
19 disciplinary action.

20 14. California Code of Regulations, title 16, section 2521, states:

21 For the purposes of denial, suspension, or revocation of a license pursuant to
22 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
23 crime or act shall be considered to be substantially related to the qualifications,
24 functions or duties of a licensed vocational nurse if to a substantial degree it
evidences present or potential unfitness of a licensed vocational nurse to perform the
functions authorized by his license in a manner consistent with the public health,
safety, or welfare. Such crimes or acts shall include but not be limited to those
involving the following:

25 (a) Procuring a license by fraud, misrepresentation, or mistake.

26 (b) A conviction of practicing medicine without a license in violation of
27 Chapter 5 of Division 2 of the Business and Professions Code.

1 (c) Violating or attempting to violate, directly or indirectly, or assisting in or
2 abetting the violation of, or conspiring to violate any provision or term of Chapter
6.5, Division 2 of the Business and Professions Code.

3 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,
4 whether a licensed physician or not, in the performance of or arranging for a violation
5 of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and
6 Professions Code.

7 (e) Conviction of a crime involving fiscal dishonesty.

8 (f) Any crime or act involving the sale, gift, administration, or furnishing of
9 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the
10 Business and Professions Code.

11 15. California Code of Regulations, title 16, section 2522 states:

12 When considering a) the denial of a license under Section 480 of the Business
13 and Professions Code, b) the suspension or revocation of a license on the ground that
14 a licensee has been convicted of a crime, or c) a petition for reinstatement of a license
15 under Section 2787.7 of the Business and Professions Code, the Board in evaluating
16 the rehabilitation of an individual and his or her present eligibility for a license, will
17 consider the following criteria:

18 (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

19 (2) Actual or potential harm to the public.

20 (3) Actual or potential harm to any patient.

21 (4) Overall disciplinary record.

22 (5) Overall criminal actions taken by any federal, state or local agency or court.

23 (6) Prior warnings on record or prior remediation.

24 (7) Number and/or variety of current violations.

25 (8) Mitigation evidence.

26 (9) In case of a criminal conviction, compliance with terms of sentence and/or
27 court-ordered probation.

28 (10) Time passed since the act(s) or offense(s) occurred.

(11) If applicable, evidence of proceedings to dismiss a conviction pursuant to
Penal Code section 1203.4.

(12) Cooperation with the Board and other law enforcement or regulatory
agencies.

(13) Other rehabilitation evidence.

1 **COSTS**

2 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8 **DRUG**

9 17. Methamphetamine is a Schedule II controlled substance as designated by Health and
10 Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business and
11 Professions Code section 4022.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Illegal Possession of Methamphetamine on August 17, 2000)**

14 18. Respondent has subjected her license to disciplinary action under section and 2878.5,
15 subdivision (a) of the Code in that she possessed the controlled substance methamphetamine on
16 August 17, 2000. The circumstances are as follows:

17 a. On or about the evening of August 17, 2000, detectives with the Sacramento
18 County Sheriff's Department went to Respondent's residence to conduct a probation check on her
19 boyfriend who was on probation for a narcotics-related offense. Respondent allowed the
20 detectives to search her premises. The detectives observed that Respondent appeared to be under
21 the influence of a central nervous system stimulant. In a search of the master bathroom, the
22 detectives located a plastic, zip-loc baggie containing an off-white powdery substance, which
23 Respondent identified as "meth." Inside a dresser drawer was a mirror with a substantial amount
24 of white powder on it, in both rock and powder form. Both substances subsequently tested
25 positive for methamphetamine. Respondent told the detectives that the methamphetamine
26 belonged to her, and she was arrested.

27 b. As a result of the arrest, on or about September 28, 2000, in a criminal
28 proceeding entitled *People of the State of California v. Debra Ann Fleischbein*, in Sacramento

1 County Superior Court, case number 00M11499, Respondent was charged with violating Health
2 and Safety Code section 11377, subdivision (a), possession of a controlled substance, to wit,
3 methamphetamine, a felony charged as a misdemeanor.

4 c. On or about May 25, 2001, Respondent entered a plea of nolo contendere
5 to the charge. The court deferred entry of judgment and Respondent was ordered to enroll in a
6 drug diversion program. On or about November 18, 2002, the court dismissed the criminal
7 charge against Respondent pursuant to Penal Code section 1000.4.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Illegal Possession of Methamphetamine & Hypodermic Needle on December 29, 2000)**

10 19. Respondent has subjected her license to disciplinary action under section and 2878.5,
11 subdivision (a) of the Code in that she possessed the controlled substance methamphetamine, and
12 a hypodermic needle on December 29, 2000. The circumstances are as follows:

13 a. On or about the evening of December 29, 2000, detectives with the Sacramento
14 County Sheriff's Department went to Respondent's residence to serve her with an arrest warrant.
15 As they approached the front door of the residence, the door opened and Respondent's boyfriend
16 stood there; he put his hand into a pocket of his jacket, then behind his back and refused to
17 comply with their orders. The detectives entered the residence and had to forcibly take him into
18 custody. Respondent's boyfriend was observed throwing a baggie on the floor that contained a
19 substance that subsequently tested positive for methamphetamine. The detectives found two
20 capped hypodermic syringes in a closet. Respondent's boyfriend told the detectives that the
21 methamphetamine belonged to Respondent. Respondent admitted that the methamphetamine was
22 hers. Respondent and her boyfriend were arrested.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(January 6, 2012 Criminal Conviction for DUI on June 25, 2011)**

25 20. Respondent has subjected her license to disciplinary action under sections 490 and
26 2878, subdivision (f) of the Code in that she was convicted of a crime that is substantially related
27 to the qualifications, functions, and duties of a licensed vocational nurse. The circumstances are
28 as follows:

1 a. On or about January 6, 2012, in a criminal proceeding entitled *People of*
2 *the State of California v. Deborah Ann Fleischbein, aka Debra Ann Fleischbein*, in Riverside
3 County Superior Court, case number RIM1111763, Respondent was convicted on her plea of
4 guilty of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol
5 concentration (BAC) of 0.08 percent or higher, a misdemeanor. The court dismissed an
6 additional count of driving under the influence of alcohol (Veh. Code, § 23152(a)), pursuant to a
7 plea agreement.

8 b. As a result of the conviction, on or about January 6, 2012, Respondent was
9 committed to the custody of the sheriff for 10 days, with credit for one day, to be served in the
10 Leaders in Community Alternative (LCA) Program.¹ Respondent was further granted 36 months
11 summary probation, and ordered to complete a four-month DUI program, pay fees, fines, and
12 restitution in the amount of \$1,834, and comply with the terms of standard DUI probation.

13 c. The facts that led to the conviction are that at 3 a.m., on or about June 25, 2011,
14 an officer with the California Highway Patrol (CHP) observed a vehicle, driven by Respondent,
15 weaving in and out of her lane of travel. The CHP officer conducted an enforcement stop. Upon
16 contact with Respondent, the officer observed an overwhelming odor of an alcoholic beverage
17 emitting from Respondent's breath and body. Respondent's eyes were glassy and her speech was
18 slurred. Respondent denied she had been drinking. Respondent was unable to perform the field
19 sobriety tests as explained and demonstrated by the officer. Respondent was arrested for driving
20 under the influence.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Use of Alcohol in a Dangerous Manner)**

23 21. Respondent has subjected her license to disciplinary action under section 2878.5,
24 subdivision (b) of the Code for unprofessional conduct in that on or about June 25, 2011, she used

25 ¹ LCA is contracted by the County of Riverside to manage the use of SCRAM, a tamper-
26 resistant bracelet that a DUI offender wears around his/her ankle. The SCRAM bracelet tests the
27 DUI offender's sweat for alcohol at least once per hour. The SCRAM bracelet wirelessly
28 transmits the results at least once per day via the SCRAM modem to a regional monitoring center.
If the DUI defendant removes the SCRAM bracelet or consumes alcohol, the regional monitoring
center will notify the court.

1 alcohol in a manner that was dangerous to herself and to others when she operated a motor
2 vehicle while impaired by alcohol, as described in paragraph 20, above.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Alcohol-Related Criminal Conviction)**

5 22. Respondent has subjected her license to disciplinary action under section 2878.5
6 subdivision (c) of the Code for unprofessional conduct in that on or about January 6, 2012, she
7 pled guilty to and was convicted of violating Vehicle Code section 23152, subdivision (b),
8 driving with a BAC of 0.08 percent or higher, as described in paragraph 20, above.

9 **SIXTH CAUSE FOR DISCIPLINE**

10 **(Failure to Abstain From Substance Abuse)**

11 23. Respondent has subjected her license to disciplinary action under section 2878,
12 subdivision (a) of the Code, and California Code of Regulations, title 16, section 2518.6 in that
13 she failed to abstain from substance abuse. The circumstances are as follows:

14 a. In 2008, the Board obtained a rap sheet from the Department of Justice
15 containing information regarding Respondent's arrests in 2000 for methamphetamine possession
16 described in paragraphs 18 and 19, above. The Board opened case number VN-2008-224 and
17 commenced an investigation.

18 b. As a result of their investigation, the Board determined that Respondent's
19 conduct was substantially related to her vocational nurse license.

20 c. In a letter to Respondent dated June 26, 2009, a representative from the Board
21 stated that they would not pursue disciplinary action against Respondent's license at that time.
22 Respondent was warned that future substantiated reports that she had engaged in similar behavior
23 or otherwise violated the law, could result in disciplinary action against her license. Two years
24 later, Respondent was arrested for driving under the influence of alcohol, and she was
25 subsequently convicted, as described in paragraph 20, above.

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1 **PRAYER**

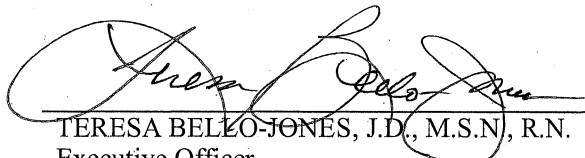
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
4 issue a decision:

5 1. Revoking or suspending Vocational Nurse License Number VN 173469, issued to
6 Deborah Ann Fleischbein;

7 2. Ordering Deborah Ann Fleischbein to pay the Board of Vocational Nursing and
8 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
9 pursuant to Business and Professions Code section 125.3;

10 3. Taking such other and further action as deemed necessary and proper.
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13 DATED: March 11, 2013.

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15 TERESA BELLO-JONES, J.D., M.S.N., R.N.
16 Executive Officer
17 Board of Vocational Nursing and Psychiatric Technicians
18 Department of Consumer Affairs
19 State of California
20 Complainant

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